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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Competition Survey) CC Docket No. 91-141
) CCB-IAD File No. 98-102

REPLY COMMENTS OF AT&T CORP.

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SUMMARY

Although they have offered modifications for the Commission's consideration, many commenters agree with AT&T that the proposed local competition survey seeks appropriate data to assist the Commission in tracking the development of local competition and assessing the efficacy of its pro-competition decisions. Most commenters also agreed that the survey adopted by the Commission should minimize reporting obligations on the industry.

To this end, AT&T maintains that it is important for the Commission to limit the information it seeks from CLECs to that which is meaningfully probative of local competition, and to grant CLECs the flexibility to report the data through estimates, or in some other form that is consistent with the manner in which they normally conduct business. The Commission can accomplish this by focusing its data collection efforts on market share, which is the primary, probative measurement of competition, and should be manageable for most carriers to report. To bolster the data the Commission collects, AT&T also agrees with the commenters which suggest that the Commission collect information on the types of services incumbent carriers sell to their affiliates, and on the extent to which incumbents make advanced services and facilities available to CLECs.

Finally, the Commission should reject arguments that it does not have authority to require carriers to report on local competition. Section 251(d) of the Telecommunications Act of 1996 clearly charges the Commission with the undisputed authority to complete all actions necessary to implement the provisions of Section 251, which include ensuring that CLECs have access to interconnection, unbundled network elements and resale. Moreover, nothing in the Eighth Circuit's decision in Iowa Utilities Board v. FCC precludes the Commission from gathering data on local competition as a way to assess its rules, nor undermines its ability to initiate the proposed survey in further of its forbearance authority.

that CLECs may not, in the normal course of business, have developed the processes or systems necessary to track the information required by the survey, and that in those instances, the Commission should explicitly permit CLECs to be able to provide estimated data.² In other words, to minimize unnecessary burdens on the industry, the Commission should solicit from CLECs only that information which is demonstrably probative of the state of local competition in each reporting area, and then allow them to report estimated data where necessary.

Several other commenters also suggested ways in which the Commission could reduce the burden on CLECs, such as implementing revenue or line thresholds which will trigger reporting obligations.³ While such thresholds are appropriate, and would help reduce the burden of reporting, AT&T maintains that it is even more important for the Commission, as described below, properly to limit the information it seeks from CLECs to that which is meaningfully probative of local competition, and then to

² Similarly, some ILEC commenters indicated that they would have to provide estimates for flat-rated local minutes carried on their networks, which they do not otherwise track in the normal course of business. BellSouth, p. 9; GTE, p. 9; SBC, p. 5. SNET (p. 5) stated that it would have to estimate the minutes exchanged with competitors.

³ See, e.g., ALTS, p. 5; TRA, p. 4.

grant CLECs the flexibility to report the requested data through estimates, or in some other form that is consistent with the manner in which each normally conducts its business.

A. Market Share And Other Measures.

Most commenters acknowledged that market share, while it is not the only indicator of competition, is the primary, probative measurement.⁴ When data collection efforts are undertaken for a monopoly market, market share is a reliable gauge of the extent to which competitors have begun to penetrate the market, and it should therefore allow the Commission to meet its goal of achieving an adequate understanding of local competition in diverse areas of the country. Public Notice (para. 1). Reporting market share, as measured by lines served via various modes of entry, should also be manageable for most carriers, thereby supporting the Commission's intent to minimize reporting burdens.⁵ For example, SBC, which acknowledges that market share is important, has already filed voluntarily several monthly reports in which it

⁴ See, e.g., Ameritech, pp. 5-7; ALTS, pp. 7-8; GSA, pp. 4-6; GTE, pp. 8-9; SBC, pp. 3-4.

⁵ If carriers report access lines served, it should not be necessary for them to report data regarding the minutes carried on their networks, which will not provide any additional information helpful to the Commission in understanding how many customers CLECs are serving.

quantifies the numbers of access lines it claims it has lost to competitors.⁶

In order to keep the reporting obligation manageable, the Commission should refrain at this time from requiring CLECs to report data other than market share measurements.⁷ For example, Ameritech (pp. 4-7), while also acknowledging the importance of market share generally, has identified other measurements that the Commission should take into account, such as the ability of competitors to offer service with the capacity they already have in place,⁸ elasticities of supply and demand, profits and revenues that are "addressable" and costs of regulation. While generally relevant and valuable when analyzing concentrated industries, these measurements are neither appropriate nor practical to include in the survey the Commission has proposed.

⁶ See Application by SBC Communications, Inc. for Provision of In-region, InterLATA Services in Oklahoma, CC Docket No. 97-121, SBC *ex partes*, filed May 7, 1998, June 1, 1998. These reports do not, however, include information regarding SBC's total base of access lines or access line growth, which as AT&T explained in its comments (pp. 9-10), is necessary to determine the actual extent to which CLECs have been able to penetrate the local market.

⁷ To this end, many commenters agreed with AT&T (p. 18) that a semi-annual reporting obligation would be more efficient and manageable than requiring carriers to report quarterly. ALTS, pp. 5-6; Bell Atlantic, p. 2; GTE, p. 10; SNET, p. 4.

⁸ See also Bell Atlantic, p. 6.

Requiring CLECs to describe their network capacity is not only competitively sensitive, but could be misleading because it would be impossible for the Commission in the context of the survey to understand the reach of the reported capacity. Just because a CLEC has installed fiber in a city's financial district, for example, does not mean that it has facilities available to serve the rest of the city or even the entire financial district. Similarly, requiring CLECs to report out the remaining capacity on their switches would not be a reliable indicator of the number of additional customers the CLEC could serve if its facilities could not effectively reach additional customers. The other indicia Ameritech identified, such as elasticities of supply and demand, profits and revenues and costs of regulation, would be difficult to quantify, burdensome to report and would not add any incremental probative value to the Commission's stated goal of understanding the extent of competition in the reporting areas.

Ameritech (p. 9) does attempt to find fault with use of market share alone. It asserts that market share is not a valid measure of market power when service is being subsidized, because competitors would not enter the subsidized areas. It claims that market share would under-represent the amount of competition under these circumstances. First, the areas that will need subsidy are few, and even those areas will be designed to be

attractive with respect to competitive entry when the Commission institutes its Universal Service policy permitting a CLEC to receive the subsidy. Second, given the absolute degree of concentration that initially exists in this industry, if entry does not occur in an area, that would certainly be prima facie evidence that market power still exists. Third, as AT&T explained in its comments (pp. 4-5), because decisions regarding forbearance are to be made on a state level, competition must be shown to be pervasive on the state level using the average degree of competitiveness across all areas of the state.⁹ Market share of lines in all areas is a necessary gauge of competitiveness.

Ameritech (p. 7) also urged the Commission to expand the survey to explore barriers to entry. This is consistent with AT&T's proposal to encourage CLECs to report information regarding the conditions they encountered in trying to enter the market during the reporting period, and is an area of inquiry some states already pursue. See (pp. 12, 16-17). On a related point, Allegiance (p. 6) and KMC (p. 4) suggested that the Commission solicit performance measurement data for the ILECs' operational support systems as part of the survey.

⁹ AT&T explained in its comments (pp. 1-3) that reporting data on an MSA basis would assist the Commission in analyzing the competitive differences which exist across an entire state. Two CLECs, Allegiance (pp. 7-8) and KMC (pp. 1-2), agreed that MSA reporting is preferable and would be manageable for CLECs.

This information would be useful to the Commission in helping it to analyze why competition has been slow to emerge in a given reporting area. For purposes of the survey, the Commission should consider requiring ILECs to provide this information once it has concluded CC Docket No. 98-56 regarding performance measurements.¹⁰

B. Affiliate Transactions.

Some commenters have suggested that the Commission should collect data on the types of services carriers sell to their affiliates.¹¹ There is a benefit to the Commission in being able to understand if an incumbent local exchange carrier ("ILEC") is using multiple corporate forms to market services to end users in a way which simply extends its market power.¹² However, it is unnecessary for the Commission to require CLECs to report this data because CLECs have no market power, and such information would not be probative

¹⁰ Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking (rel. Apr. 17, 1998).

¹¹ TCG, pp. 2-4; GTE, p. 5.

¹² Because the proper focus of the survey is competition for local exchange service, the Commission should not require the reporting of wireless services data while these services are only complementary to the wireline services and underlying facilities of the ILECs. AT&T Comments, pp. 6-8. Indeed, BellSouth's concern (p. 8) that the proposed survey does not provide clear guidance to wireless providers as to what extent they must respond suggests that including them does not fit with the Commission's stated goals.

with respect to the main issue, which is determining whether and the extent to which the ILECs' market power has eroded. It is therefore unnecessary to require CLECs to undertake the burden of reporting about the extent to which they may or may not offer UNEs and resold services to affiliates.

C. Types Of Services And Facilities.

Finally, Allegiance (p. 6) has recommended that the Commission require carriers to identify the types of loops that carriers are purchasing, particularly loops compatible with advanced services such as ISDN and xDSL. Similarly, ALTS (p. 3) and TRA (p. 7) suggest that the survey should track the deployment of advanced and broadband services. AT&T believes it imperative for the Commission to understand the extent to which these advanced services and facilities are available to CLECs. Without this level of information, it would not be apparent to the Commission, for example, that an ILEC was only willing to offer analog loops in a reporting area. Access to disaggregated service and facility information, on the other hand, would allow the Commission to inquire into whether the ILEC was refusing to provide broadband loops or whether there was simply no demand for them from the CLECs in that reporting area. AT&T therefore suggests that it would be appropriate for the ILECs to report disaggregated service and facility information.

II. THE COMMISSION HAS AUTHORITY TO INSTITUTE REPORTING REQUIREMENTS FOR LOCAL SERVICE AND SHOULD NOT ABANDON ITS SURVEY PROPOSAL.

BellSouth argued in its comments that the Commission does not have authority to require local carriers to report on local competition.¹³ BellSouth is incorrect. The Commission has ample authority to undertake its proposed data collection activity.

The Public Notice (para. 3) states that the Commission seeks to gather information to evaluate the effectiveness of decisions taken to implement the pro-competition provisions of the Act, and to determine when to exercise its regulatory forbearance authority. The Commission is clearly charged in Section 251(d) of the Act, 47 U.S.C. § 251(d), with completing all actions necessary to implement the requirements of Section 251, which include ensuring that competitive carriers have access to interconnection, unbundled network elements and resale. To the extent that the Commission seeks to understand if competitive services are available through such means, it may do so through the proposed survey. Nothing in the Eighth Circuit's decision precludes the Commission from gathering data on local competition as a way to assess the efficacy of those rules it has undisputed authority to adopt, or undermines its ability

¹³ BellSouth, p. 2 (1997), citing Iowa Utilities Board v. FCC, 120 F.3d 735, ("Eighth Circuit Order"), petitions for cert. granted sub nom., AT&T Corp. v. Iowa Utilities Board, 118 S. Ct. 879 (1998).

to initiate the proposed survey in furtherance of its forbearance authority. To the contrary, two separate provisions of the Act expressly grant the Commission jurisdiction to prescribe rules and regulations and to perform "any and all acts" which are necessary to carry out the provisions of the Act. See Sections 154(i), 201(b), 47 U.S.C. §§ 154(i), 201(b).

BellSouth has also disregarded Section 271, under which the Commission has authority to decide the merits of Regional Bell Operating Companies' ("RBOCs") requests for interLATA relief.¹⁴ Section 271 requires that the Commission find, among other things, that: there is a facilities-based competitor for residential and business services in the state for which the RBOC seeks relief; the RBOC has complied with the competitive checklist, under which it must demonstrate that it met its duties under Section 251; and the requested authorization will be carried out in accordance with the public interest. Sections 271(c)(1)(A), 271(c)(2)(B), 271(d)(3)(C), U.S.C. §§ 271(c)(1)(A), 271(c)(2)(B), 271(d)(3)(C). The proposed survey solicits information which is consistent with these provisions.

BellSouth (pp. 4-6) also argued that the Commission should not impose reporting requirements because it can rely on other sources for the information,

¹⁴ See SBC Communications Inc., et al v. FCC, No. 97-1425 (D.C. Cir. Mar. 20, 1998), slip op. at 14.

such as local competition surveys conducted in the states. AT&T pointed out in its comments (pp. 15-18) that a number of state commissions have undertaken comprehensive state surveys, and that this Commission can rely on them as an additional source of data. It also explained that the state surveys can reduce the federal reporting obligation on carriers, which may already have a process in place to gather the competitive data the states requested.

However, AT&T does not agree with BellSouth that the Commission's proposed survey is duplicative of the state surveys and should be abandoned. The states have determined the criteria they required to meet their specific needs in the dockets in which they have ordered the data collection. In some cases, it is clear that they decided it would be valuable to seek extensive information from the respondents,¹⁵ while in other cases, they have solicited more minimal information.¹⁶ While the states sought this information in order to develop a record for their local competition proceedings or state 271 investigations, among others, it is unlikely that they developed the survey with the explicit goal of evaluating the effectiveness of this Commission's decisions

¹⁵ See AT&T, pp. 16-17, citing Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, Order No. 8 (Tex. PUC, issued Mar. 3, 1998).

¹⁶ See, e.g., BellSouth Comments, Attachment (Alabama Public Service Commission Survey requiring yes/no answers to various questions about UNEs, collocation).

implementing the Act, as stated in the Public Notice (para. 3).

In addition, some of the data collected at the state level may be confidential, requiring the Commission to make arrangements with the responding carriers to review it or rely on it. It is also not clear that the states will continue to collect the information once their relevant proceedings are closed.¹⁷ Accordingly, it is in no way apparent that the Commission's data collection efforts will duplicate the efforts of the states, and it should disregard BellSouth's comments on this issue.

¹⁷ Although AT&T believes that the Commission's reporting obligation should not be indefinite, it is premature, in light of the Commission's stated goals, to designate a date on which the requirements will sunset. Accord ALTS, p. 12; GSA, p. 9, MCI, p. 8; TRA, p. 6.

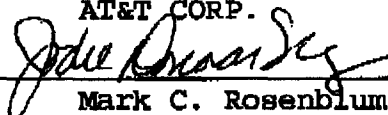
CONCLUSION

For the reasons stated above and in AT&T's comments, the Commission should adopt its proposed survey with the modifications AT&T has proposed, and expressly permit CLECs the flexibility to respond to the survey in the manner which will be least costly and burdensome to them.

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CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 22nd day of June, 1998, a copy of the foregoing "Reply Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.



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